TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 607.

DAVIS AND FARNUM MANUFACTURING COMPANY, APPELLANT,

vs.

THE CITY OF LOS ANGELES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED DECEMBER 24, 1903.

35276

(18,735.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 507.

DAVIS AND FARNUM MANUFACTURING COMPANY, APPELLANT,

vs.

THE CITY OF LOS ANGELES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 8, 1902.

a UNITED STATES OF AMERICA, ss:

To the City of Los Angeles, a municipal corporation, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington in the District of Columbia, on the 27th day of November, A. D. 1902, pursuant to an order allowing an appeal entered in the clerk's office of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, from a final decree signed, filed, entered and recorded on the 3rd day of April, 1902, in that certain cause, being in equity, No. 1015, wherein The Davis & Farnum Manufacturing Company, a corporation, is complainant and appellant and you are defendant and appellee, to show cause, if any there be, why the decree rendered against said appellant in the said order allowing appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Olin Wellborn, United States district judge for the southern district of California, and one of the judges of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, this 29th day of September A. D. 1902, and of the Independence of the United States, the one hundred and twenty-seventh.

OLIN WELLBORN,
U. S. District Judge for the Southern District of California.

Received copy of the foregoing citation this first day of October, 1902.

W. B. MATHEWS,
City Attorney, and Attorney for Defendant,
City of Los Angeles.

b [Endorsed:] In the Supreme Court of the United States, The Davis & Farnum Manufacturing Company, .. corporation, appellant, *vs.* The City of Los Angeles, a municipal corporation, appellee. Citation. Filed Oct. 1 1902 Wm. M. Van Dyke, clerk —— —— deputy

1 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.
No. 1015.

2 In the Circuit Court of the United States in and for the Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Plaintiff,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.
Bill of Complaint.

To the honorable judges of the circuit court of the United States in and for the southern district of California, in equity sitting:

Davis & Farnum Manufacturing Company, a citizen of the State of Massachusetts plaintiff, brings this its bill of complaint against The City of Los Angeles, a citizen of the State of California, defendant, and thereupon your orator complains and shows.

That at all times mentioned in this complaint your orator was a corporation duly organized and doing business under and by virtue of the laws of the State of Massachusetts, and engaged in the general business of iron founders and manufacturers of machinery, gas works, gas holders and receivers, and other machinery.

That the said defendant, The City of Los Angeles, is a municipal corporation duly organized under the laws of the State of California and situate in the county of Los Angeles, in said southern district of California.

And your orator further showeth unto your honors, that on or about the first day of September, A. D. 1901, at the city of Los Angeles in said district, one Caroline W. Dobbins, a citizen and resident of the county of Los Angeles and State of California, in said district, made and entered into a certain contract with the Valley Gas and Fuel Company, a corporation duly organized and
3 doing business under and by virtue of the laws of the State of California, (for the purpose, among other things, of erecting gas works), to build, construct and erect for the said Caroline W. Dobbins on certain premises to be designated by the said Caroline W. Dobbins in the said city of Los Angeles, and on certain premises owned by her, as hereinafter described, certain gas works, including all things necessary for the manufacture, recovery and storage of gas.

That in order to enable the said Valley Gas & Fuel Company to carry out the said contract with the said Caroline W. Dobbins aforesaid, your orator on or about the 17th day of September, A. D., 1901, at Waltham, in the State of Massachusetts, entered into a certain

contract with the said Valley Gas and Fuel Company to erect on those certain premises in the city of Los Angeles, to be designated by said Caroline W. Dobbins, certain portions of certain gas works for the manufacture, recovery and storage of gas, consisting more particularly of a certain water tank and gas-holder, said water tank and gas-holder to be laid upon a cement foundation prepared by the said Valley Gas & Fuel Company, to be sixty-two feet in diameter by twenty feet nine inches (20 ft. 9″) in height, and of a capacity of about four hundred sixty-seven thousand and seven hundred (467,700) gallons of water; said tank to be made of sheet steel and iron; to have a steel bottom thoroughly riveted and made water-tight, with sides consisting of four steel rims, each of about five feet in height, thoroughly riveted and made water-tight. On the top and outside of said tank, a run-around of steel two feet six inches (2 ft. 6″) in width, together with braces for said tank sixty feet nine inches (60 ft. 9″) in height, with twenty (20) girders re-enforced with forty-eight (48) tie-bars and also wind braces; the textile strength of said water tank to be sixty-two thousand (62,000) pounds to the square foot. Inside of said water tank to erect a steel
4 gas-holder of a capacity of one hundred thousand (100,000) cubic feet of gas, consisting of two lifts with proper curbs and cups, each lift being made of steel, eight sheets, with cups and curbs, all properly constructed and completed, the same to be done as quickly and speedily as possible; said holder to be all complete and delivered to the Valley Gas & Fuel Company, pursuant to its said contract with the said Caroline W. Dobbins, of the best material suitable for such purposes, and in a good and workmanlike manner.

In consideration whereof the said Valley Gas & Fuel Company agreed to pay unto your orator for said work the sum of thirteen thousand six hundred and eighty-five ($13,685) dollars, upon the delivery of said works complete.

And your orator further showeth unto your honors that immediately on the entering into of said contract, your orator at its manufactory in the State of Massachusetts, commenced the construction of said water tank and gas-holder, and the building of the necessary machinery to be used in connection therewith, and prepared and foundered the necessary iron and steel to be used therein; that as soon as the same was completed at said foundry the same was forwarded from the city of Waltham, in the State of Massachusetts, by railroad transportation to the city of Los Angeles, in the State of California, in said district, and delivered upon the premises of the said Caroline W. Dobbins hereinafter particularly described, and by her designated for that purpose; that since the arrival of said iron and steel on said premises as aforesaid, your orator employed divers and sundry men and skilled mechanics, at great expense to your orators, bringing said men from different parts of the United States, to wit: from Trenton, New Jersey, Philadelphia, Pennsylvania, from Toledo, Ohio, from San Francisco in the State of California, and from other places, for the purpose of putting together and erecting the said water tank and gas-holder with the steel so made and

furnished by your orator as aforesaid; and pursuant to the
5 contract aforesaid, with said men, your orator has commenced the erection of said water tank and gas-holder and has so far erected the same, that at this time said water tank is now erected fifteen feet and nine inches (15 ft. 9″) in height, and if your orator is allowed to go on with said work, without interruption and interference from the said defendant, the said water tank will in the course of a week or ten days be fully completed by your orator, according to the said contract entered into between your orator and the Valley Gas & Fuel Company as aforesaid. And your orator is ready, willing and able, with said men, and with said steel, to complete the erection of said gas-holder and fulfill and carry out on its part the terms of said contract so entered into between your orator and the said Valley Gas & Fuel Company as aforesaid.

And your orator further showeth unto your honors that on or about the 26th day of August, A. D. 1901, the common council of the city of Los Angeles attempted to pass a purported ordinance known as ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," which said ordinance was on the said 26th day of August, 1901, attempted to be approved by the mayor of the city of Los Angeles, and duly published in the official paper of the city of Los Angeles in accordance with the provisions of the charter of the said city of Los Angeles, which said purported ordinance is in words and figures as follows, to wit:

Ordinance No. 6663.

(New series.)

An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

The mayor and council of the city of Los Angeles, do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or cor-
6 poration to erect or cause to be erected, maintain or cause to be maintained any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows; to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue, to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of

Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

7 SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this ordinance shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles, at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

And your orator further shows that thereafter, within the territory of the city of Los Angeles, within which, by said purported ordinance last hereinbefore set forth, it was lawful to erect or maintain gas works, gas tanks or reservoirs for the manufacture of gas, and on or about the 28th day of September, A. D. 1901, the said Caroline W. Dobbins, for the purpose of erecting gas works, purchased the following-described premises situate in the city of

Los Angeles and State of California, to wit: All of lots sixteen
8 (16), seventeen (17) and eighteen (18) of block two (2), Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book Five, page 199, miscellaneous records of said Los Angeles county; also that part of lot fifteen (15) in said block two (2), described as follows, to wit:

Commencing at a point in the northerly line of St. John street at the most southerly corner of said lot fifteen (15); thence along the dividing line between lots fifteen (15) and sixteen (16) of said block two (2), north forty-six degrees (46°) west thirty-eight and fifty one-hundredths (38.50) feet to a point; thence north thirty-four degrees and two minutes (34° 2′) east nine and sixty-four one-hundredths (9.64) feet to a point; thence north twenty-nine degrees and forty-two minutes (29° 42′) east fifty (50) feet to a point; thence north twenty-two degrees and eighteen minutes (22° 18′) east forty-four and twenty-eight-hundredths (44.28) feet to a point in the westerly line of the tract conveyed to D. McCool, trustee, by deed recorded in Book 461, page 7 of deeds, records of said Los Angeles county; thence along the westerly line of said tract conveyed to D. McCool, trustee, south three degrees and thirty-seven minutes (3° 37′) west, one hundred and six and thirty-seven-hundredths (106.37) feet to a point in the northerly line of St. John street; thence along the northerly line of St. John street forty-four degrees (44°) west eighteen and three-tenths (18.3) feet to the place of commencement.

And your orator further shows that on or about the 28th day of December, A. D., 1899, the city council of the city of Los Angeles, passed a certain ordinance known as ordinance No. 6181, new series, of the city of Los Angeles, entitled "An ordinance regulating the manner of constructing, altering, repairing, moving (when moved without entering upon a public street or alley) of buildings in the city of Los Angeles; providing for the issuing of permits for the same and for the condemnation of buildings and other structures when dangerous to property, life or limb;" section 101 of
9 which ordinance was in words and figures as follows:

"It shall be unlawful for any person, firm or corporation, to erect or cause to be erected, maintained or cause to be maintained, occupy, or cause to be occupied, any livery stable, blacksmith shop, stone-crusher, rolling mill, planing mill, carpet-beating establishment, fireworks factory, soap factory, gas works, or other factory where power other than animal power or water power is used, outside of the limits of fire district No. 1 of the general fire limits of the city of Los Angeles, and within the corporate limits of said city without a permit from the fire commissioners so to do. Before any such permit shall be granted, the clerk of the board of fire commissioners shall mail a notice to each record owner of real property in the block in which it is intended to erect the building or structure for which a permit is sought, by depositing in the United States post-office a postal card directed to each such record owner of property at his last known address, notifying said record owner of the fact that such permit is applied for, the nature of the same, and the time and place when and where the application for

the granting of the same will be heard. Said board shall at such hearing give an opportunity to all parties interested to be heard, and shall have power to grant or refuse such permit. The costs of mailing said notice to be first deposited, by said applicant, with the clerk of said board."

And your orator further shows that by the charter of the city of Los Angeles, it was provided that there should be four fire commissioners appointed by the council of the city of Los Angeles, and that they should have such powers and perform such duties as should be granted or imposed by ordinance. And your orator further shows that pursuant to the regulations in said ordinance prescribed, and said ordinance being in full force and effect, on or about the first day of November, A. D., 1901, the said Caroline W. Dobbins, for the purpose of manufacturing, recovering and distributing
10 gas made application to the board of fire commissioners of the city of Los Angeles for a permit to erect gas works, which application of the said Caroline W. Dobbins to the said board of fire commissioners was in words and figures as follows:

"To the Hon. M. P. Snyder, mayor of the city of Los Angeles, and the board of fire commissioners.

GENTLEMEN: The undersigned, Caroline W. Dobbins, a resident of the county of Los Angeles and State of California, for the purpose of manufacturing, recovering and distributing gas, respectfully asks for a permit from the fire commissioners to erect works for the manufacture, recovery and storage of gas upon the following-described premises, situate in the city of Los Angeles, State of California, to wit:

All of lots sixteen (16), seventeen (17) and eighteen (18) in block two (2), Pomeroy and Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199, miscellaneous records of said Los Angeles county. Also that part of lot fifteen (15) in said block two (2) described as follows, to wit:

Commencing at a point in the northerly line of St. John street, in the most southerly corner of said lot fifteen (15); thence along the dividing line between lots fifteen (15) and sixteen (16) of said block two (2), north forty-six degrees (46°) west thirty-eight and fifty one-hundredths (38.50) feet to a point; thence north thirty-four degrees and two minutes (34° 2′) east nine and sixty-four one-hundredths (9.64) feet to a point; thence north twenty-nine degrees and eighteen minutes (22° 18′) east forty-four and twenty-eight-hundredths (44.28) feet to a point in the westerly line of the tract conveyed to D. McCool, trustee, by deed recorded in Book 461, page 7 of deeds, records of said Los Angeles county; thence along the westerly line of said tract conveyed to D. McCool, trustee, south three
11 degrees and thirty-seven minutes (3° 37′) west one hundred and six and thirty-seven-hundredths (106.37) feet to a point in the northerly line of St. John street; thence along the northerly line of St. John street south forty-four degrees (44°) west eighteen and three-tenths (18.3) feet to the place of commencement.

Said premises are within the limits prescribed by an ordinance

passed by the city council of the city of Los Angeles on the 29th day of August, 1901, in which it shall be lawful to erect and maintain works for the manufacture of gas. Said gas works are to consist of fire-proof buildings and tanks to be constructed of iron, brick, stone and concrete, and no buildings, tanks or other works are to be constructed thereon of any combustible material.

That the gas so manufactured or so to be manufactured is to be supplied to the inhabitants of the city of Los Angeles for illuminating purposes only.

(Signed) CAROLINE W. DOBBINS."

That said application of the said Caroline W. Dobbins was on said first day of November, 1901, presented to the fire commissioners and by them was referred to the chief of the fire department for investigation and report, and thereafter, on the 8th day of November, 1901, the application of the said Caroline W. Dobbins for permission to establish gas works was taken up by the fire commissioners; that the clerk of the board of fire commissioners reported that the petitioner had advanced the costs of sending required notification to property-owners as prescribed in the building ordinance as aforesaid, and that notices had been sent notifying the record owners of the property in the block in which it was intended to erect said building or structure, for which permit was sought, of the fact that such permit was applied for, the nature of the same, and the time and place when and where the application for the granting of the same would be heard; that at said meeting of the board, said board gave an opportunity to all persons interested to be heard, and on motion duly made, then and there took
12 the said application and the matters therein referred to, under advisement; that afterwards, on or about the 22nd day of November, 1901, such further proceedings were had before the fire commissioners upon said application, that on motion the application of Caroline W. Dobbins for permission to erect and maintain a gas works was taken from the table and it was duly moved and seconded that the application be granted; that upon the hearing of said motion three of said commissioners, to wit: Commissioners Webb, Vickery and Frankenfield voted aye and Commissioner Kuhrts no; that thereupon and after said vote was announced the said Commissioner Kuhrts changed his vote on said motion from no to aye and gave notice that on the next meeting he would move to reconsider the question; that afterwards, and on the 29th day of November, 1901, at the next meeting of the board of fire commissioners, in accordance with the notice given at the last meeting, Commissioner Kuhrts moved to reconsider the motion made at the last meeting to grant to Caroline W. Dobbins a permit to erect gas works, which motion was lost by the following vote: No, Commissioners Webb, Vickery and Frankenfield; aye, Commissioner Kuhrts and Mayor Snyder; all of which will by the records of the said fire commissioners, now in the hands of the clerk of the said fire commissioners, or by a copy thereof, ready to be produced upon the trial hereof, more fully and at large appear.

And your orator further showeth unto your honors that immediately upon the granting of the said permit by the said board of fire commissioners to said Caroline W. Dobbins, and on the said 22nd day of November, 1901, said Valley Gas & Fuel Company, pursuant to its contract with the said Caroline W. Dobbins aforesaid, entered into divers and sundry contracts with divers and sundry persons for the erection of certain portions of said gas works, and more particularly with one C. J. Kubach, a builder and contractor in the city of Los Angeles, who then and there on said date,
13 commenced the laying of the cement foundation for the water tank and gas-holder, which was erected thereon by your orator under contract entered into between it and the said Valley Gas & Fuel Company aforesaid; that pursuant to said contract, the said C. J. Kubach, for the said Valley Gas & Fuel Company, laid the foundations for said gas-holder and water tank, and also the foundations for other portions of said works, at a cost of upwards of the sum of twenty-five hundred dollars ($2500); that said foundations are of great strength and of very costly material, and that if the same should have to be destroyed or removed, it would cause irreperable damage and injury, both to the said Caroline W. Dobbins, the Valley Gas & Fuel Company and to your orator as under the contract between your orator and the said Valley Gas & Fuel Company to erect thereupon the water tank and gas-holder aforesaid, your orator would not be able to complete said contract so entered into as aforesaid.

And your orator further shows unto your honors that on or about the 25th day of November, 1901, the city council of the city of Los Angeles attempted to pass a purported ordinance, purporting to be an ordinance entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance" which said purported ordinance is in words and figures as follows:

Ordinance No. 6779.

(New series.)

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

14 SECTION 1. That section 1 of ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26th, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence southeasterly following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of November 25th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of November, 1901.

M. P. SNYDER, *Mayor.*

And your orator further shows that it is advised and therefore charges the fact to be, that said purported ordinance last hereinbefore set forth, attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, is void and invalid in that it is uncertain, unreasonable, and is an attempt to regulate in an unlawful manner and without authority of law, the business of erecting gas works within the city of Los Angeles, and is

in violation of the rights of your orator secured to it by virtue of the contract entered into between it and the said Valley Gas & Fuel Company, and in violation of the rights granted to the said Caroline W. Dobbins by the city of Los Angeles, on the 22nd day of November, 1901, as aforesaid, and is in violation of the provisions of the Constitution of the United States prohibiting the passing of any law impairing the obligations of contracts.

And your orator further shows unto your honors that since the granting of the said permit to the said Caroline W. Dobbins
16 by the said board of fire commissioners of the city of Los Angeles on the 22nd day of November, 1901, as aforesaid, the said Valley Gas & Fuel Company has been carrying out its said contract with the said Caroline W. Dobbins, and until the commission of *of* the acts of the said defendant hereinafter set forth, has been peaceably and lawfully engaged in the erection of gas works upon the premises of the said Caroline W. Dobbins hereinbefore set forth; and your orator has been engaged upon said premises for the said Valley Gas & Fuel Company in carrying out its said contract with the said Valley Gas & Fuel Company and until the commission of the acts of the said defendant hereinafter set forth, has been peaceably and lawfully engaged in the erection of the water tank and gas-holder hereinbefore described, and until the 25th day of February, 1902, when the said city of Los Angeles, combining and confederating with one James R. C. Burton, and with divers and sundry persons, to your orator unknown, in the name of the People of the State of California, instituted a proceeding in the police court of the city of Los Angeles against one J. M. Smith and one Thaddeus Lowe then and there in the employ of the Valley Gas & Fuel Company in the erection of the said gas works on the premises of the said Caroline W. Dobbins hereinbefore described, in the carrying out of the said contract on behalf of the said Valley Gas & Fuel Company with the said Caroline W. Dobbins aforesaid, charging the said J. M. Smith and the said Thaddeus Lowe with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works, establishments and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, described in the said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, last hereinbefore set forth; and thereupon, upon the complaint filed in said proceedings in the said police court
17 of the city of Los Angeles, on the 27th day of February, 1902, caused the arrest and detention of the said Thaddeus Lowe and the said J. M. Smith upon a warrant issued by the judge of the said police court of the city of Los Angeles, for the alleged violation of the said city ordinance; that on the first day of March 1902, the said city of Los Angeles likewise combining and confederating with the said James R. C. Burton, and with divers and sundry persons, to your orator unknown, in the name of the People of the State of California, instituted another proceeding in the police court of the city of Los Angeles against the said J. M. Smith, and the said

Thaddeus Lowe, and also against H. S. Stephens, W. H. Bolte, E. E. Miles and William A. Kennedy, then and there in the employ of the said Valley Gas & Fuel Company in the erection of the said gas works on the premises of the said Caroline W. Dobbins hereinbefore described, engaged in carrying out said contract on behalf of the said Valley Gas & Fuel Company with the said Caroline W. Dobbins aforesaid, charging the said J. M. Smith, the said Thaddeus Lowe, the said H. S. Stephens, the said W. H. Bolte, the said E. E. Miles and the said William A. Kennedy with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works, establishments and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of said city of Los Angeles and outside of the limits of the alleged district described in said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, as hereinbefore set forth; and thereupon, upon the complaint filed in said proceeding in said police court of the city of Los Angeles on the first day of March, 1902, caused the arrest and detention of the said Thaddeus Lowe, J. M. Smith, H. S. Stephens, W. H. Bolte, E. E. Miles and William A. Kennedy upon the warrant issued by the judge of the said police court of the city of Los Angeles for the alleged violation of the said alleged ordinance;

18 that afterwards, on the first day of March, 1902, the said city of Los Angeles again combining and confederating with the said James R. C. Burton, and with divers and sundry other persons to your orator unknown, in the name of the People of the State of California, instituted another proceeding in the police court of the city of Los Angeles against the said J. M. Smith, Thaddeus Lowe, William Bolte, H. S. Stephens, W. A. Kennedy, E. E. Miles then and there in the employ of the Valley Gas & Fuel Company, and also Martin Daly, Thomas Malone, Thomas A. Scott, William Hoff, Ranson Colahan, W. B. Berner, E. V. Glasgow, Nolan J. Brestin, G. J. Odell and Elmer Edwards in the employ of your orator in the erection of the said gas works on the premises of the said Caroline W. Dobbins hereinbefore described, in the carrying out of the said contract between your orator and the said Valley Gas & Fuel Company, and of the said contract between the said Valley Gas & Fuel Company and the said Caroline W. Dobbins aforesaid, charging the said J. M. Smith, Thaddeus Lowe, William Bolte, H. S. Stephens, W. A. Kennedy, E. E. Miles, Martin Daly, Thomas Malone, Thomas A. Scott, William Hoff, Ranson Colahan, W. B. Berner, E. V. Glasgow, Nolan J. Brestin, G. J. Odell and Elmer Edwards with having committed a misdemeanor in that they did willfully and unlawfully erect and cause to be erected certain works, establishments and manufactory for the manufacture of gas and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, and outside of the limits of the district described in the said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, as hereinbefore set forth. And there-

upon, upon the complaint filed in said proceeding in the said police court of the city of Los Angeles, on the third day of March, 1902, that said city of Los Angeles caused the arrest and detention of the said Thaddeus Lowe, J. M. Smith, William Bolte, H. S. Stephens, W. A. Kennedy, E. E. Miles, Martin Daly, Thomas Malone, Thomas A. Scott, William Hoff, Ranson Colahan, W. B. Berner, E. V. Glasgow, Nolam J. Brestin, G. J. Odell and Elmer Edwards, upon the warrant issued by the judge of the said police court of the city of Los Angeles for the alleged violation of the said alleged city ordinance.

19 And your orator further shows unto your honors that the arrest and detention of the said employees of your orator, whose names are hereinbefore set forth, seriously interferred with and interrupted the work of your orator in carrying out said contract of your orator so entered into as aforesaid with the Valley Gas & Fuel Company, and was in violation of the rights of your orator as acquired under and by virtue of said contract.

And your orator further shows unto your honors that afterwards, on the 3rd day of March, 1902, the said city of Los Angeles recognizing the invalidity of the said alleged ordinance so by the common council of the city of Los Angeles attempted to be passed and adopted on the 25th day of November, 1901, as hereinbefore set forth, by its mayor and council, attempted to pass another purported ordinance entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," which said purported ordinance is in words and figures as follows:

Ordinance No. 7029.

(New series.)

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

20 SECTION 1. That section 1, of ordinance No. 6663, new series, entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be, and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson avenue; thence northerly along the center line of Wilson avenue to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Cen-
21 ter street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east, and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance, and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

And your orator further shows unto your honors that it is advised and therefore charges the fact to be that said purported ordinance last herein set forth, attempted to be passed by the city council of the city of Los Angeles on the 3rd day of March, 1902, is void and invalid in that it is uncertain and unreasonable, and is an

attempt to regulate in an unlawful manner and without
22 authority the business of erecting gas works within the city of Los Angeles and is in violation of the rights of your orator, secured to it by virtue of the contract entered into between it and the said Valley Gas & Fuel Company, and in violation of the rights secured to the said Caroline W. Dobbins by the city of Los Angeles on the 22nd day of November, 1901, as aforesaid, and is in violation of the provisions of the Constitution of the United States prohibiting the passing of any law impairing the obligation of contracts.

And your orator further shows that said alleged ordinance last hereinbefore set forth was on the 3rd day of March, 1902, approved by the mayor of the city of Los Angeles, and was afterwards, on the 5th day of March, 1902, published in the Los Angeles Daily Journal as in and by said alleged ordinance provided; and your orator is advised and therefore so charges the fact to be, that if said ordinance is a valid ordinance in so far it may have been regularly adopted by the city council of the city of Los Angeles and approved by the mayor and published in the Los Angeles Daily Journal as aforesaid, that the same repealed the alleged ordinance heretofore attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, and that said ordinance of November 25th, 1901, as hereinbefore set forth, is thereby made no longer of any force and effect.

And your orator further shows unto your honors that your orator is now endeavoring in all respects to carry out and perform its contract with the Valley Gas & Fuel Company, and to erect on the premises of the said Caroline W. Dobbins, hereinbefore described, the said water tank and gas-holder provided for in the contract between your orator and the said Valley Gas & Fuel Company, to be used in the erection of the gas works by the Valley Gas & Fuel Company for the said Caroline W. Dobbins as aforesaid; but that the said city of Los Angeles again combining and con-
federating with the said James R. C. Burton and with divers
23 and sundry persons to your orator unknown, threatens in the name of the People of the State of California to institute another proceeding in the police court of the city of Los Angeles against the said Thaddeus Lowe, J. M. Smith and Martin Daly, and the other men whose names are hereinbefore mentioned as the employees of your orator, and other persons engaged in the erection of said gas works on the premises of the said Caroline W. Dobbins, in the employ of the Valley Gas & Fuel Company, in carrying out said contract on behalf of the said Valley Gas & Fuel Company, with the said Caroline W. Dobbins, threatens to charge the said Thaddeus Lowe, J. M. Smith, Martin Daly and other employees of your orator with having com-itted a misdemeanor, charging them and each of them with wilfully and unlawfully erecting or causing to be erected certain works, establishments and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas, within the corporate limits of said city of Los Angeles, and outside of the limits described in said purported ordinance attempted to be passed by the said council of the city of Los Angeles on the

3rd day of March, 1902, last hereinbefore set forth; and the said city of Los Angeles now threatens to cause the arrest and detention of the said Thaddeus Lowe, the said J. M. Smith, the said Martin Daly and all the other employees of your orator engaged in the erection and construction of the said water tank and gas-holder as hereinbefore set forth, and to imprison and confine the said employees of your orator for the alleged violation of the said alleged city ordinance.

And your orator further shows unto your honors that the said city of Los Angeles threatens, that if your orator continues to carry on its work in which it is engaged in completing the said water tank and gas-holder under its contract with the said Valley Gas & Fuel Company, that it will arrest all persons employed by your orator and engaged in said work, until it will have
24 stopped the business of your orator and the performance by your orator of its work in carrying out its said contract, and will arrest the men employed by your orator as often as they shall be found at work for your orator upon said undertaking, charging them with the violation of the alleged ordinance last aforesaid, and unless the said city of Los Angeles is restrained and enjoined by this court from executing its said threats that the said city of Los Angeles will arrest and continue to arrest the men employed by your orator in conducting its said business in the erection of the said water tank and gas-holder and in the carrying out of its said contract with the said Valley Gas & Fuel Company, so entered into as aforesaid, until said work is stopped.

And your orator further showeth unto your honors that if said city of Los Angeles shall be allowed to arrest, and to continue to arrest the employees of your orator so engaged by it in the building of said water tank and gas-holder, and in carrying out its contract with the Valley Gas & Fuel Company aforesaid, and if the said city of Los Angeles is allowed to carry its threats into execution, that your orator would suffer great and irreperable loss; that the work already performed by your orator in the carrying out of said contract consists of the being placed upon the grounds of the said Caroline W. Dobbins, hereinbefore described, a large quantity of steel plates ready to be put in place in said water tank and gas-holder, and of having partially erected on said premises the water tank as hereinbefore set forth, all of which are exposed to the elements and unprotected and in eminent danger of being utterly destroyed by the action of the elements, and are of great value to your orator, costing upwards of the sum of eight thousand dollars ($8000); that your orator has been forced to employ in the construction of said water tank and gas-holder skilled mechanics and has brought them from divers and sundry places, at great distances from the city of Los Angeles, as hereinbefore set forth, and that if said city is allowed to
25 execute its said threats of arresting said men, said men threaten to and will leave the employment of your orator; and if said work shall be retarded and interrupted by reason of the said threats and execution thereof by the said city of Los Angeles, as it will if said threats are executed, the said skilled laborers and

mechanics so employed by your orator will become scattered and your orator will not be able again to obtain their services, or the services of like men in such employment; all of which would cause your orator such great and irreperable damages that your orator would have no adequate remedy at law, and would not be able to carry out the contract entered into between your orator and the said Valley Gas & Fuel Company, and would result in innumerable actions at law and a multiplicity of suits, which would have to be instituted at great expense, and all without any possibility of your orator recovering indemnity for said expenses; that your orator has already done work in carrying out said contract amounting to upwards of the sum of nine thousand dollars ($9000) and has only received on account thereof the sum of about three thousand dollars ($3000) and could not and would not be able to recover the sums of money already expended by it, and the expenses incurred by it in attempting to carry out its said lawful contract with the said Valley Gas & Fuel Company, as it would not on its part be able to fulfill and carry out the same according to the terms thereof; that the damages sustained by your orator, if unable to complete said contract hereinbefore set forth would be upwards of the sum of ten thousand dollars ($10,000).

And your orator further showeth unto your honors that it had well hoped that it would be permitted, as it had a right to do, to carry out the said contract with the said Valley Gas & Fuel Company, and fulfill the same without any interruption from any person or persons whomsoever; but that the said city of Los
26 Angeles combining and confederating with divers and sundry persons to your orator unknown, has so attempted to, and has interferred with the rights of your orator, and with the prosecution of the work undertaken by your orator as aforesaid, in the carrying out of its said contract with the Valley Gas & Fuel Company as aforesaid, and the said city of Los Angeles threatens and intends to proceed against your orator and its said employees, until your orator is compelled to desist from the completion of said contract, all of which acts and doings on the part of the said city of Los Angeles are in violation of the rights of your orator and contrary to equity and good conscience.

And your orator further showeth unto your honors that the said city of Los Angeles ought to be restrained and enjoined from carrying out its said threats and from interferring with the work of your orator in the carrying out of its said contract with the said Valley Gas & Fuel Company in the erection of said water tank and gas-holder as aforesaid; and your orater is advised that it is entitled to, and therefore claims the aid of this honorable court enjoining and restraining the said defendant, its officers, agents and employees, and all persons combining and confederating with it, and each and every of them, from enforcing the said alleged ordinances hereinbefore set forth against your orator, or any of its agents, servants or employees, and preventing your orator from carrying out and prosecuting the said work of erecting the said water tank and gas-holder upon the premises of the said Caroline W. Dobbins, hereinbefore

described, in pursuance of its contract with the said Valley Gas and Fuel Company as hereinbefore set forth; and from in any manner interferring, retarding, interrupting or stopping the work of your orator, or its agents, servants or employees in carrying out said contract.

In tender consideration whereof and forasmuch as your orator is otherwise remediless save in a court of equity where such matters are properly relievable and cognizable. To the end therefore,
27 the said City of Los Angeles may be made a party defendant to this your orator's bill of complaint, and may answer the same, but not under oath, its answer under oath being hereby expressly waived, and may full, true, perfect and direct answer make, and may show, if it can, by what authority or right it should interfere with your orator in its completion and carrying out of its said contract with the Valley Gas & Fuel Company, and that the said defendant may answer and set forth to the best of its knowledge, information or belief, the name and names of all persons, associations or corporations with which it has been combining, and confederating in its attempt to interfere with your orator in the prosecution of its said contract with said Valley Gas & Fuel Company as hereinbefore set forth; and that the said persons, when so discovered, may be made parties defendant to this your orator's bill of complaint and answer the same as if their names were inserted herein at this time specifically with proper allegations to charge them; and whether the Los Angeles Lighting Company, a corporation organized and doing business under the laws of the State of California, in the city of Los Angeles, or any of its agents, counsellors, attorneys, servants or employees have aided, or abet-ed, or combined or confederated with the said defendant or with any of its agents, officers or employees, in its interference with the work of your orator in carrying out said contracts with the Valley Gas & Fuel Company in the erection of said water tank and gas-holder, and where and in what manner the said Los Angeles Lighting Company, its agents, counsellors, attorneys, servants and employees so aided, abet-ed, confederated and combined with the said city of Los Angeles aforesaid, or with its agents, officers or employees, and whether the said Los Angeles Lighting Company, its agents, counsellors, attorneys, servants or employees, or any other person acting for or in behalf of said Los Angeles Lighting Company at the instigation or direction of the said Los Angeles Lighting Company, aided or abet-ed
28 in the prosecution of the said proceedings instituted in the name of the People of the State of California against the said employees of your orator as hereinbefore set forth.

That upon the hearing hereof that a temporary injunction may be issued enjoining and restraining the said defendant, The City of Los Angeles, its counsellors, attorneys, solicitors, officers, agents and employees and all persons combining and confederating with it and each and every of them, from enforcing the said alleged ordinance number 6779, new series, attempted to be adopted the 25th day of November, 1901, and entitled "An ordinance amending an ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection

or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles' approved August 26th, 1901, by amending section one of said ordinance;" or enforcing the said alleged ordinance number 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," against your orator or any of its agents, servants or employees, and from preventing your orator from carrying out and prosecuring the said work of erecting the said water tank and gas-holder upon the terms in said bill of complaint described, situated in the city of Los Angeles, and State of California, to wit: All of lots sixteen, seventeen and eighteen of block two, Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county, in pursuance of its contract with the said Valley Gas & Fuel Company, as hereinbefore set forth, and from any manner interfering, retarding,
29 interrupting or stopping the work of your orator or its agents, servants, or employees in carrying out said contract or in completing said work. And that on the hearing hereof that said defendant, its counsellors, attorneys, officers, agents and employees, and all persons combining and confederating with it, and each and every of them, may be perpetually enjoined from doing any of the acts last hereinbefore specifically set forth; and that your orator may have such other and further relief as the nature of the circumstances of this case may require, and as to your honors shall seem meet, *the*

May it please your honors, the premises considered, to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said City of Los Angeles, its counsellors, attorneys, solicitors, officers, agents and employees, and all persons combining and confederating with it, and each and every of them, commanding them and each of them absolutely to desist and refrain from enforcing the said alleged ordinance number 6779, new series, attempted to be adopted the 25th day of November, 1901, and entitled "An ordinance amending ordinance No. 66-3, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," or enforcing the said alleged ordinance number 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," against your orator or any of its agents, servants or employees, and from preventing your orator from carrying out and prosecuting the said work of erecting the said water tank and gas-holder upon the terms in said bill of complaint described, situated in the city of Los Angeles, and State of California, to wit: All of lots sixteen, seventeen and

30 eighteen of block two, Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county, in pursuance of its contract with the said Valley Gas & Fuel Company, as hereinbefore set forth, and from any manner interferring, retarding, interrupting or stopping the work of your orator or its agents, servants or employees in carrying out said contract or in completing said work.

May it please your honors, the premises considered, to grant unto your orator not only the writ of injunction heretofore asked for, but also a writ of subpœna to be directed to the said City of Los Angeles, commanding it at a certain time and under a certain penalty therein to be named, personally to be and appear before this honorable court, and then and there full, true and perfect answer make to all and singular the premises, and to stand to, abide by, and perform such further order and decree in the premises as to this honorable court shall seem meet and agreeable to equity and good conscience. And your orator will ever pray, etc.

DAVIS & FARNUM MANUFACTURING COMPANY,
By ORLANDO MAINES, *Their Agent.*

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Solicitors for said Complainant.

UNITED STATES OF AMERICA,
Southern District of California, Southern Division, } ss:

Orlando Maines, being duly sworn upon oath, deposes and says: That he is the authorized agent of The Davis & Farnum Manufacturing Company, the complainant in the foregoing action; that as such all the matters and things in the said bill of complaint set
31 forth are within his own personal knowledge; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge.

ORLANDO MAINES.

Subscribed and sworn to before me this 6th day of March, A. D. 1902.

WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California,
[SEAL.] By CHAS. N. WILLIAMS, *Deputy.*

(Endorsed:) No. 1015. In the circuit court of the United States, ninth circuit, southern district of California, southern division. Davis & Farnum Manufacturing Company, a corporation, plaintiff, vs. The City of Los Angeles, a municipal corporation, defendant. Bill of complaint. Filed Mar. 6 1902 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy Lynn Helm and Lee, Scott, Bailey & Chase, attorney- for complainant, Los Angeles, California.

32 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division. In Equity.

The President of the United States of America to the City of Los Angeles, a municipal corporation, Greeting:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court-room in Los Angeles, on the 7th day of April, A. D. 1902, to answer a bill of complaint exhibited against you in said court by the Davis & Farnum Manufacturing Company, a corporation, duly organized and doing business under and by virtue of the laws of the State of Massachusetts, and a citizen of the State of Massachusetts, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 7th day of March, in the year of our Lord one thousand nine hundred and two, and of our Independence the one hundred and twenty-sixth.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of April next, at the clerk's office of said court pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

WM. M. VAN DYKE, *Clerk.*

Clerk's office: Los Angeles, California.

33 UNITED STATES MARSHAL'S OFFICE, }
Southern District of California. }

I hereby certify, that I received the within writ on the 7th day of March, 1902, and personally served the same on the 7th day of March, 1902, on The City of Los Angeles, (a corporation), by delivering to and leaving with M. P. Snyder, mayor of The City of Los Angeles, said defendant named therein, personally, at the county of Los Angeles, in said district, a certified copy thereof.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

Los Angeles, March 7th, 1902.

(Endorsed:) Original. Marshal's doc. No. 449. No. 1015. U. S. circuit court, ninth circuit, southern district of California. Southern division. In equity. Davis & Farnum Manufacturing Company,

vs. The City of Los Angeles, a municipal corporation. Subpœna. Filed Mar 7 1902 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy.

34 In the Circuit Court of the United States in and for the Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Plaintiff,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.

And now comes the said plaintiff by leave of court first had and obtained and files this amendment to its bill of complaint filed herein on the 6th day of March, 1902, by inserting therein at the end of line thirteen, page twenty-three the following paragraphs:

And your orator further shows unto your honors that it is informed and believes and charges the fact to be, that ever since the inception of said enterprise instituted, commenced and undertaken by the said Caroline W. Dobbins, about the first day of August, 1901, the said defendant, The City of Los Angeles and the municipal authorities thereof, its officers and agents, have continuously thrown obstacles in the way of the successful completion of the said enterprise of the said Caroline W. Dobbins, and have continuously and systematically attempted to, thwart and frustrate her plans and have interferred with and interrupted her said work in various portions thereof; that immediately after the organization, at the instance of, and for the benefit of the said Caroline W. Dobbins of the said Valley Gas & Fuel Company, the said city council of the city of Los Angeles attempted to pass and adopt the ordinance No. 6663, new series, which was adopted on the 26th day of August, 1901, as aforesaid, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los
35 Angeles;" and afterwards, when the said Caroline W. Dobbins had purchased within the district prescribed by said ordinance last hereinbefore referred to, the lands upon which she proposed to erect said gas works, and when on or about the 28th day of September, 1901, an application had been made to the board of fire commissioners of the city of Los Angeles for a permit to erect gas works upon said premises, the said city council of the city of Los Angeles considered and deliberated upon an ordinance then and there introduced to said city council of the city of Los Angeles entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles' approved August 26th, 1901, by amending section one of said ordinance," the object of said proposed ordinance being to further restrict the limits of the district in the city of Los Angeles in which it was lawful to erect and maintain gas works, by which said ordinance it was proposed to eliminate from the district theretofore described in the said alleged ordinance adopted on

the 26th day of August, 1901, all that portion of said district lying between San Fernando street on the north and west, Sotello and Leroy streets on the south and west and the Los Angeles river on the east, in which was particularly situated the land owned and purchased by the said Caroline W. Dobbins as aforesaid, and upon which it was proposed by the said Caroline W. Dobbins to erect the said gas works; that such proceedings were had in the said city council of the city of Los Angeles on the presentation and consideration of said ordinance that the same was by the said city council referred to the committee on legislation of said city council, and thereupon the hearing on the application theretofore made to the said board of fire commissioners was suspended and the same entirely suspended by the said board of fire commissioners while the said matter was pending before the said committee on legislation of the said
36 council of the said city of Los Angeles, and for upwards of two weeks; that during the time that said application for permit to erect gas works on the premises of said Caroline W. Dobbins above referred to, was still pending before the said board of fire commissioners as aforesaid, and while the question of the adoption of the said proposed ordinance was still pending before the said legislative committee of the said city council, the said board of fire commissioners were induced to consider, and did consider and agreed to the adoption of a certain rule and regulation in reference to applications for permits to erect gas works, which said rule and regulation is hereinafter referred to; that after such determination of the said board of fire commissioners to adopt said rule and regulation hereinafter referred to, said proposed ordinance proposing to restrict the limits of said district in which it was lawful to erect gas works as aforesaid, came before the city council of the city of Los Angeles on the report of said legislative committee, the said legislative committee having reported against the adoption of said ordinance; and thereupon, at the meeting of said board of fire commissioners of the said city of Los Angeles, said rule and regulation hereinafter referred to having theretofore been considered by said board of fire commissioners as aforesaid, was at the meeting of the board of fire commissioners on or about the 25th day of October, 1901, adopted in words and figures as follows: "Whereas, applications are on file with this board for permission to erect gas-manufacturing plants at different points within the district to which said plants are limited; and whereas, a very great majority of the property-owners living in the vicinity of locations for which applications are made protest against the granting of permits; and whereas, this board is satisfied that the respective applications for permission to build are attempting to engage in the business of the distribution of gas for general purposes, including its use for fuel and power,
37 without first procuring a franchise from the city for said right; now, therefore, be it resolved, that all applications now pending before this board for permission to erect gas-manufacturing plants are hereby denied; that, hereafter, in all cases where an application for permission to erect gas-manufacturing plant shall be

made to this commission, the said application shall state whether or not the gas so manufactured is to be supplied to the inhabitants of the city of Los Angeles for illuminating purposes only. Said application shall be verified by the oath of the applicant, and in case it shall appear to the commission that no proper ground exists for the denial of the application, and that said gas is to be used for illuminating purposes only, the same shall be forthwith granted. But in case it shall appear that the gas is to be furnished for general purposes, such as fuel, power, etc., then the applicant therefore must procure a franchise from the city of Los Angeles to distribute gas before his said application will be finally granted by this commission." The effect of which rule was to dismiss and deny the application theretofore made for permission to erect gas works upon the premises of the said Caroline W. Dobbins as hereinbefore set forth; that afterwards, on the first day of November, 1901, the said Caroline W. Dobbins having complied with all the rules and regulations of the said board of fire commissioners, made an application on her own behalf for a permit to erect gas works upon said premises hereinbefore described, and afterwards, on the 22nd day of November, 1901, the said board of fire commissioners granted the said permit to the said Caroline W. Dobbins as hereinbefore set forth; and thereupon the said city council of the city of Los Angeles, as soon thereafter as they met, to wit, on the 25th day of November, 1901, attempted to pass and adopt the said ordinance No. 6779, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain
38 portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," as hereinbefore set forth; but in addition to the acts of the said municipal authorities of the said city of Los Angeles hereinbefore set forth, on or about the 7th day of October, 1901, the city council of the city of Los Angeles attempted to pass another certain purported ordinance known as No. 6726, new series, entitled "An ordinance prohibiting the use of any public street or thoroughfare in the city of Los Angeles for the purpose of laying down or maintaining therein any pipe, conduit or connections therewith, without a franchise," wherein and whereby the said city of Los Angeles attempted to ordain that it should be unlawful for any person, firm or corporation to lay down any pipe, conduit or connections therewith, in any public street or thoroughfare in the city of Los Angeles, for the purpose of supplying the said city or its inhabitants with fresh water or gas used exclusively for illumination, or with other illuminating light, without first obtaining a permit from the superintendent of streets to make the necessary excavations therefor; and that any person, firm or corporation desiring to obtain such permit should file with the superintendent of streets an application therefor in writing, setting forth the public streets or thoroughfares and the particular portions thereof which it was desiring to excavate, the size and character of the excavation to be made and specific purpose for which the pipe, conduit or connections therewith was to be used, whether

for water, gas or electricity, and if for gas or electricity, that said gas or electricity was to be supplied solely to said city or its inhabitants, to be used exclusively for illumination and that said application must be verified by the oath of said person, or by an oath of the member of said firm, or by the oath of the president and secretary of said corporation, as the case may be; that thereafter, when the said Caroline W. Dobbins desired to make an application for a permit to excavate the streets of
39 the city of Los Angeles for the purpose of laying pipe in order to distribute to the citizens of the city of Los Angeles gas by her to be manufactured for the purpose of supplying them with artificial light, the superintendent of streets of the city of Los Angeles unlawfully required of the said Caroline W. Dobbins an application therefor in writing, setting forth the public streets and thoroughfares and the particular portions thereof, which was desired by the said Caroline W. Dobbins to excavate, the size and character of the excavations to be made and the specific purpose for which the pipe, conduit or connections therewith was to be used, and that said gas was to be supplied solely to the city or its inhabitants exclusively for illumination, and required that the said application should be verified by the oath of the said Caroline W. Dobbins, all of which requirements were unlawful, and were for the purpose of annoying, harassing, impeding, hindering and delaying the said Caroline W. Dobbins in her attempt to carry out successfully the lawful enterprise in which she was engaged; that thereafter, in addition to the adoption of the said purported ordinances so attempted to be adopted by the city council of the city of Los Angeles, and in addition to the acts of the said superintendent of streets of the city of Los Angeles hereinbefore set forth, the said city of Los Angeles, through its city attorney, prosecuted the proceedings instituted by the said J. R. C. Burton hereinbefore set forth, for the arrest of, and detention of the men employed in the construction and erection of the said gas works of the said Caroline W. Dobbins and in the employ of your orator, in the construction of said water tank and gas-holder, all of which acts and doings on the part of the city of Los Angeles, its municipal authorities, officers and agents, as hereinbefore set forth, your orator charges and avers were for the purpose of hindering, harassing, impeding, delaying and frustrating the efforts and attempts of the said Caroline W. Dobbins to carry out the
40 lawful business and enterprise so undertaken by her as aforesaid, and were instituted and prosecuted for the purpose of compelling the said Caroline W. Dobbins to stop and abandon the further prosecution of such enterprise.

And your orator further showeth unto your honors that it is informed and believes, and so charges the fact to be, that the said defendant, The City of Los Angeles, the municipal authorities and employees thereof, were in their acts and doings hereinbefore set forth wilfully and unlawfully instigated, advised and controlled by the officers, attorneys, agents and employees of the Los Angeles Lighting Company, a corporation organized under the laws of the State of California, with its principal office in the city of Los Ange-

les, engaged in the manufacture and supplying of gas in the city of Los Angeles, and which said company for upwards of ten years last past has enjoyed a monopoly of the gas business in the city of Los Angeles; that said Los Angeles Lighting Company through its officers, attorneys, agents and employees has had sufficient influence with the municipal government of the city of Los Angeles, and with its office-s, to bring about the passage and adoption of the alleged ordinances hereinbefore set forth, which the said city council of the city of Los Angeles has attempted to adopt since the commencement of the enterprise attempted by the said Caroline W. Dobbins, and has had sufficient influence with the officers and employees of the said city of Los Angeles to compel them to enforce and attempt to enforce the alleged ordinances so attempted to be passed and adopted by the city council of the city of Los Angeles as aforesaid, against the said Caroline W. Dobbins, her agents, contractors and employees engaged in the erection of said gas works, and the laying of pipes in the streets of the city of Los Angeles on behalf of the said Caroline W. Dobbins, in enabling her to carry out the enterprise as aforesaid; that all of said ordinances attempted to be passed and adopted by the said council of the city of Los Angeles
41 restricting the limits of the city of Los Angeles in which it was lawful to erect gas works, as prescribed by the ordinance adopted by the council of the city of Los Angeles on the 26th day of August, 1901, hereinbefore set forth, were prepared by the attorneys and agents of the said Los Angeles Lighting Company and by them presented to the members of the city council of the city of Los Angeles for adoption; that before the attempted adoption of the said alleged ordinance of the 25th day of November, 1901, hereinbefore set forth, the said Los Angeles Lighting Company through its attorneys and agents, in order to comply with the rules of the said city council, that before the passage of any ordinance a printed copy thereof should be furnished to each of the members of the city council of the city of Los Angeles, caused to be printed and distributed to the members of the city council of the city of Los Angeles printed copies of the proposed ordinance which the said city council afterwards on the 25th day of November, 1901, attempted to adopt and pass as aforesaid; that the said street superintendent of the city of Los Angeles, under the restrictions purporting to be placed upon him by the said council of the city of Los Angeles by the attempted adoption of the alleged ordinance No. 6726, new series, last herein referred to, being compelled to demand of the said Caroline W. Dobbins a verified application for a permit to open the streets of the city of Los Angeles for the purpose of laying pipes therein for the purpose of distributing gas by her to be manufactured, contrary to the rights of the said Caroline W. Dobbins to use the streets of the said city of Los Angeles for the purpose of laying pipes therein, as guaranteed to her by section 19, article 11 of the constitution of the State of California; that thereupon the said Los Angeles Lighting Company, its agents and employees, printed and caused to be delivered by its agent to said superintendent of streets of the city of Los Angeles, printed blanks prepared by their attor-

neys, for application for permits to excavate in public streets in the city of Los Angeles, a copy of which blank is
42 hereto attached and marked Exhibit "A," and made a part hereof as though hereinafter specifically set forth, reference thereunto being had; that the said Los Angeles Lighting Company, its officers and agents, combining and confederating with the said J. R. C. Burton, and with divers and sundry persons to your orator unknown, have compelled the city attorney of the city of Los Angeles, and his deputies and assistants, to prepare the complaints in the proceedings instituted by the said J. R. C. Burton in the name of the People of the State of California against the employees of your orator and the other contractors of the said Caroline W. Dobbins, engaged in the erection of said gas works as hereinbefore set forth; and have instituted the filing of said complaints and the issuance of the warrants thereon, and the arrest and imprisonment and detention by the officers of the city of Los Angeles, of the said employees; and that the said Los Angeles Lighting Company, by its officers, attorneys, agents and employees, has boasted and threatened that if the said proceedings so instituted by the said J. R. C. Burton against the employees of your orator and the other contractors of the said Caroline W. Dobbins shall fail, and if the said ordinances hereinbefore set forth shall be declared void and invalid, that they will by their influence and efforts secure the passage by the city council of the city of Los Angeles of an ordinance regulating the gas business of the city of Los Angeles and requiring the payment of a license, which license they have boasted and threatened shall be prohibitory in its nature and so high as to prevent the said Caroline W. Dobbins from carrying on said business of manufacturing and distributing gas within the city of Los Angeles.

And your orator charges the fact to be, that each and every of the acts aforesaid so permitted by the city of Los Angeles, its officers, agents and employees, were done and permitted, not for the purpose of protecting any public interest or preserving any public
43 right, but that said acts and each of them were, as your orator is informed and believes, suggested and formulated by the said Los Angeles Lighting Company, its officers, attorneys, agents and employees, solely for the purpose of protecting said Los Angeles Lighting Company in the enjoyment of that monopoly which has continued for upwards of ten years, as hereinbefore alleged, and for the purpose of depriving the said Caroline W. Dobbins of vested rights in property and of the privilege of pursuing her lawful undertaking and enterprise as the same is hereinbefore specifically set forth, and for the purpose of compelling your orator to desist from the erection of said water tank and gas-holder under its contract hereinbefore set forth, in the exercise of which rights and privileges your orator and the said Caroline W. Dobbins, is protected by the provisions of the Constitution of the United States.

And your orator further shows unto your honors that the said territory surrounding the premises of the said Caroline W. Dobbins hereinbefore described, in which the said gas works of the said Caroline W. Dobbins are being erected, and which was by ordinance

No. 6663, new series, hereinbefore set forth, a portion of the territory within which the city of Los Angeles permitted the maintenance of gas works, is and was a district devoted to manufacturing and commercial enterprises almost exclusively; that in said district, prior to the purchase of the property hereinbefore described by the said Caroline W. Dobbins, and upon which the said gas works are being erected by the said Caroline W. Dobbins aforesaid, there was in operation a soap factory; that at all times since the first day of August, 1901, there has been and is now maintained in the district bounded by Redondo and Alhambra streets, the Los Angeles river, and San Fernando streets in the city of Los Angeles, one wool-pulling factory, which is directly across North Main street from the said premises of the said Caroline W. Dobbins, three wineries, numerous oil wells in operation or drilling, and extensive iron foundry in active oper-
44 ation, a brass foundry and an extensive oil factory; that there is a great deal of vacant and unoccupied land which is and will continue to be apparently worthless except for the purpose of erecting thereon manufacturing establishments; that immediately adjacent to the easterly line of said district last hereinbefore described, are the tracks of the Southern California Railway Company on which are operated the freight and passenger trains of the Santa Fe railroad; that east of that and adjacent thereto, is the Los Angeles river, and that east thereof is the right of way and the tracks of the San Pedro, Los Angeles & Salt Lake railroad; that immediately east of those tracts, an extensive tannery is located and in operation; that immediately north of said district and north of San Fernando street and adjacent to the tracks of the Santa Fe railroad are the oil tanks and refineries of the Standard Oil Company in extensive operation; that prior to the granting of the permit by the board of fire commissioners of the city of Los Angeles to the said Caroline W. Dobbins on the 22nd day of November, 1901, the said board of fire commissioners and the members of said commission individually and jointly visited and examined the said premises and the said district surrounding the same, and having heard the protests of all persons who appeared before them, decided and admitted by the granting of said permit that said premises were in all respects a suitable place upon which to erect the said gas works and conduct the business of manufacturing gas.

And your orator further shows that said gas works are being constructed and are to be completed upon concrete foundations with a superstructure of brick, steel and iron of the best material procurable, and are not combustible, and that the same are so firmly and substantially constructed that there can be no danger from explosion, bursting or leakage; that all the machinery now in place therein, or to be placed therein, is of the most approved pat-
tern and constructed in accordance with the latest devices
45 and improvements known in the manufacture of gas; that said works can be, or ought to be operated and maintained by the said Caroline W. Dobbins, by the use of said devices and improvements, and the said machinery therein contained, so that there will be no leakage or escape of odors, and that the same will

not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the said inhabitants of the said district and territory in which said gas works are located or of any other of the inhabitants of the said city of Los Angeles.

And your orator further showeth unto your honors by way of supplement that since the filing of said original bill herein, the said city of Los Angeles again combining and confederating with the said J. R. C. Burton, and with divers and sundry persons to your orator unknown, in the name of the People of the State of California instituted another proceeding in the police court of the city of Los Angeles against Thaddeus Lowe, F. A. Smith, M. Daly, R. Solahan, A. Burgess, W. B. Verner, F. Mullen, E. V. Glasgow, J. Ryan, J. Pelo, P. Hussey, R. J. Nieto, C. H. Tyler, W. Huff, T. A. Sealt, W. Bastock, W. Nolan, H. S. Malone, J. I. Alvarez, A. J. Shaw, M. Ortlip, J. Breslin, G. O'Dell, E. E. Miles, the said Thaddeus Lowe and the said F. S. Smith being in the employ of the Valley Gas & Fuel Company, and all of the other of said persons being in the employ of your orator in the erection of said gas works on the premises of the said Caroline W. Dobbins in the carrying out of said contract between your orator and the said Valley Gas & Fuel Company and of the contract between said Valley Gas & Fuel Company and the said Caroline W. Dobbins, charging the said Thaddeus Lowe, the said F. A. Smith, M. Daly, R. Colahan, A. Burgess, W. B. Verner, F. Mullen, E. V. Glasgow, J. Ryan, J. Pelo, P. Hussey, R. J. Nieto, C. H. Tyler, W. Huff, T. A. Sealt, W. Bastock, W. Nolan, H. S. Malone, J. I. Alvarez, A. J. Shaw, M. Ortlip, J. Breslin, G. O'Dell, E. E. Miles with having commit-ed a misdemeanor in that they did willfully
46 and unlawfully erect and cause to be erected, maintained and cause to be maintained, certain works, establishment and manufactory for the manufacture of gas, and a certain water tank, reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of that district as described in the purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 3rd day of March 1902, as hereinbefore set forth, and that thereupon, upon the complaint filed in said proceeding in the said police court of the city of Los Angeles on the 6th day of March, 1902, that said city of Los Angeles did cause the arrest and detention of the said Thaddeus Lowe, F. A. Smith, M. Daly, R. Colahan, A. Burgess, W. B. Verner, F. Mullen, E. V. Glasgow, J. Ryan, J. Pelo, P. Hussey, R. J. Nieto; C. H. Tyler, W. Huff, T. S. Sealt, W. Bastock, W. Nolan, H. S. Malone, J. I. Alvarez, A. J. Shaw, M. Ortlip, J. Breslin, G. O'Dell, E. E. Miles upon the warrant issued by the judge of said police court of the city of Los Angeles for the alleged violation of the said city ordinance.

And your orator further shows unto your honors that by the arrest and detention of the said employees of your orator hereinbefore set forth, your orator has been compelled to desist and refrain from further work upon its said contract of erecting said water tank and gas-holder hereinbefore set forth, and said arrest of the said men

and employees was in violation of the rights of your orator as in said original bill of complaint set forth.

DAVIS & FARNUM MANUFACTURING COMPANY,
By ORLANDO MAINES, *Its Agent.*

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Solicitors for said Complainant.

47 UNITED STATES OF AMERICA. } ss:
Southern District, Southern Division, }

Orlando Maines being duly sworn deposes and says: That he is the agent of The Davis & Farnum Manufacturing Company, the complainant in the foregoing action; that he has read the amendment to the bill of complaint filed herein and that he knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

ORLANDO MAINES.

Subscribed and sworn to before me this 8th day of March, A. D. 1902.

[SEAL.] NATHAN NEWBY,
Notary Public in and for the County of Los Angeles, State of California, in said District.

(Endorsed:) No. 1015. In the circuit court of the United States ninth circuit, southern district of California southern division. Davis & Farnum Manufacturing Company plaintiff *vs.* The City of Los Angeles, a municipal corporation, defendant. Amendment and supplemental bill. Service of the within am'd bill admitted this 8th day of March, 1902. W. B. Mathews, per H. S. attorney for def't. Filed Mar. 10 1902 Wm. M. Van Dyke, clerk Lynn Helm Lee, Scott, Bailey & Chase, attorney-for complainant Los Angeles, California.

48 In the Circuit Court of the United States in and for the Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Plaintiff,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant. } In Equity.

The demurrer of the above-named defendant, The City of Los Angeles, a municipal corporation, to the bill of complaint of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint con-

tained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill. And for causes of demurrer showeth,

I.

It appeareth by the plaintiff's own showing by the said bill, that it is not entitled to the relief prayed by the bill against this defendant.

II.

It appeareth by the plaintiff's own showing by the said bill that it is not entitled to any relief herein against this defendant.

III.

It appeareth by the said bill that this honorable court has no jurisdiction of the person of this defendant.

49 IV.

It appeareth by said bill that this honorable court has no jurisdiction of the subject of this suit.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant doth demur thereto. And he prays the judgment of this honorable court, whether he shall be compelled to make any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

W. B. MATHEWS,
Solicitor for Defendant.

CITY HALL, LOS ANGELES.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

W. B. MATHEWS,
Solicitor for Defendant.

Los Angeles, Cal., March 10th, 1902.

STATE OF CALIFORNIA,
County of Los Angeles, Southern District of California, } ss:

M. P. Snyder, being duly sworn, deposes and says: I am an officer, to wit, the mayor of The City of Los Angeles, defendant in the above-entitled suit, and make this affidavit on behalf of said defendant. The foregoing demurrer is not interposed for delay.

M. P. SNYDER.

Sworn to before me this 10th day of March, 1902.

HERBERT J. GOUDGE,
[SEAL.] *Notary Public in and for the County of Los Angeles, State of California.*

50 (Endorsed:) (Original) No. 1015. In the circuit court of the United States, for the southern district of California.

Davis & Farnum Manufacturing Company, a corporation, plaintiff *vs.* The City of Los Angeles, a municipal corporation, defendant. Received copy of the within this 18 day of March, 1902, Lynn Helm, Lee, Scott, Bailey & Chase, attorney- for pl'ff. Filed Mar. 18, 1902, Wm. M. Van Dyke, clerk Chas. N. Williams, deputy W. B. Mathews, city attorney, city hall, Los Angeles, Cal., attorney for defendant.

51 At a stated term, to wit, the January term, A. D., 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court-room in the city of Los Angeles on Thursday the third day of April, in the year of our Lord one thousand nine hundred and two:

Present: The Honorable Olin Wellborn, district judge.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant. } No. 1015.

This cause having heretofore been submitted to the court for its consideration and decision on complainant's application for a preliminary injunction, and the court having duly considered the same and being fully advised in the premises, it is now on this 3rd day of April, 1902, being a day in the January term, A. D., 1902, of said circuit court, ordered that complainant's application for a temporary injunction, be, and the same hereby is refused; and thereupon come Lynn Helm, Esq., and Edward C. Bailey, Esq., of counsel for complainant, and W. B. Mathews, Esq., Le Comte Davis, Esq., and W. R. Bacon, Esq., of counsel for defendant and now submit to the court for its consideration and decision defendant's demurrer to the bill of complaint, whereupon it is now by the court ordered that said demurrer be and the same hereby is sustained and complainant's bill of complaint dismissed.

52 I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court April 3rd, 1902, in the cause entitled Davis & Farnum Manufacturing Company, a corporation, complainant, *vs.* The City of Los Angeles, a municipal corporation, defendant, No. 1015, and remaining of record therein.

Attest my hand and the seal of said circuit court, this 3rd day of April, A. D., 1902.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 1015. U. S. circuit court, ninth circuit, southern district of California. Davis & Farnum Manufacturing Company, a corporation, *vs.* The City of Los Angeles, a municipal corporation. Certified copy order sustaining demurrer and dismissing bill. Filed Apr. 3 1902 Wm. M. Van Dyke, clerk.

53 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant. } No. 1015.

The complainant filed its bill of complaint herein on the 6th day of March, 1902, which is hereto annexed.

A subpœna to appear and answer in said cause was thereafter on the 7th day of March, 1902, issued, returnable on the 7th day of April, 1902, which is hereto annexed.

The complainant filed its amendment and supplemental bill of complaint herein on the 10th day of March, 1902, which is hereto annexed.

On the 18th day of March, 1902, the defendant filed herein its demurrer to the bill of complaint, which is hereto annexed.

On the 3rd day of April, 1902, the court made and entered herein an order refusing complainant's application for a temporary injunction, sustaining defendant's demurrer to the bill of complaint and dismissing complainant's bill of complaint, a copy of which order is hereto annexed.

On the 3rd day of April, 1902, a final decree in accordance with said order was signed, filed, entered and recorded herein and is hereto annexed.

54 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant. } No. 1015.

In the above-entitled, cause the court having on this 3rd day of April, 1902, being a day in the January term, A. D., 1902, of said circuit court of the United States for the southern district of California, ordered that said demurrer be sustained and that complainant's bill of complaint be dismissed,

Now therefore, it is ordered, adjudged and decreed that complainant's said bill of complaint be and the same hereby is dismissed, and that defendant have and recover of and from complainant its costs in this behalf, taxed at $—.

OLIN WELLBORN, *Judge.*

Decree entered and recorded April 3rd, 1902.

WM. M. VAN DYKE, *Clerk.*

55 (Endorsed:) No. 1015. U. S. circuit court, ninth circuit, southern district of California. Davis & Farnum Manufacturing Company, a corporation, *vs.* The City of Los Angeles, a municipal corporation. Decree. Filed Apr. 3 1902 Wm. M. Van Dyke, clerk.

56 Whereupon, said bill of complaint, subpœna, amendment and supplemental bill of complaint, demurrer to the bill of complaint, copy of order refusing application for temporary injunction, sustaining demurrer and dismissing bill and said final decree are hereto annexed, said final decree being duly signed, filed and enrolled pursuant to the practice of said circuit court.

Attest, etc.,

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 1015. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. Davis & Farnum Manufacturing Company, a corporation, *vs.* The City of Los Angeles, a municipal corporation. Enrolled papers. Filed April 3rd, 1902. Wm. M. Van Dyke, clerk. Recorded Decree Register Book No. 2, page 580.

57 In the Circuit Court of the United States in and for the Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Plaintiff,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.

This cause coming on to be heard upon the motion of the plaintiff herein for a temporary injunction as prayed for in said bill of complaint, and the court having read the said complaint and heard the argument of counsel for plaintiff,

It is ordered that the said defendant show cause on Monday, the 10th day of March, 1902, at opening of the said circuit court at 10.30 o'clock a. m. why a preliminary injunction should not be granted herein enjoining the said defendant, The City of Los Angeles, its counsellors, attorneys, solicitors, officers, agents and employees, and all persons combining and confederating with it, and each and every of them from enforcing the said alleged ordinance number 6779, new series, attempted to be adopted the 25th day of November, 1901, and entitled "An ordinance amending an ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance;" or enforcing the said alleged ordinance number 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series,

entitled 'An ordinance prohibiting the erection or maintenance
58 of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," against the plaintiff or any of its agents, servants or employees, and from preventing the plaintiff from carrying out and prosecuting the said work of erecting the said wanter tank and gas-holder upon the terms in said bill of complaint described, situated in the city of Los Angeles, and State of California, to wit: All of lots sixteen, seventeen and eighteen of block two, Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county, in pursuance of its contract with the said Valley Gas & Fuel Company, as hereinbefore set forth, and from any manner interferring, retarding, interrupting, or stopping the work of said plaintiff, or its agents, servants or employees in carrying out said contract or in completing said work. As prayed for in said bill of complaint on file herein.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 1015. In the circuit court of the United States ninth circuit southern district of California southern division. Davis & Farnum Manufacturing Company plaintiff *vs.* The City of Los Angeles, defendant. Order to show cause. Filed Mar. 7 1902 Wm. M. Van Dyke, clerk Lynn Helm & Lee, Bailey & Chase, attorney- for plaintiff. Los Angeles, California.

59 OFFICE OF THE U. S. MARSHAL,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 7th day of March 1902 and personally served the same on the 7th day of March, 1902, on The City of Los Angeles the defendant therein, named, by delivering to and leaving with M. P. Snyder, mayor of the city of Los Angeles, personally, at the county of Los Angeles in the said district, a certified copy thereof.

H. Z. OSBORNE,
U. S. Marshal,
By G. F. McCULLOCH, *Deputy.*

Los Angeles, Cal. March 7th, 1902.

60 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING CO., a Corporation, Complainant,
v.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.
} No. 1015.

Opinion of the Court on Application for Temporary Injunction.

Complainant, at the commencement of this suit, was erecting, within the city of Los Angeles, for and under contract with another party, a water-holder and gas tank, and filed its bill solely to enjoin threatened criminal prosecutions, under an ordinance of said city, alleged to be invalid, against its employees for working on said structures, the purpose and effect of which prosecutions, the bill alleges, are to compel complainant to abandon said work, and thereby destroy or impair its vested property rights.

The questions now presented for consideration relate to the equitable jurisdiction of this court, and the validity of said ordinance. These questions will be taken up in the order of their statement, because if the jurisdiction does not exist, further inquiry concerning the ordinance is unnecessary.

The Supreme Court of the United States has said:

"The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of prop-
61 erty. It has no jurisdiction over the prosecution, the punishment, or the pardon of crimes and misdemeanors, or over the appointment or removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offences, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative department of the Government. * * *

"The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. Att'y Gen. *v.* Cleaver, 18 Ves. Jr. 211, 220; Turner *v.* Turner, 15 Jur. 218; Saull *v.* Browne, L. R. 10 Ch. 64; Kerr *v.* Preston, L. R. Ch. D. 463.

"Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine. Story Eq. Jur. § 893. And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statutes of the State, or under municipal ordinances. West *v.* Mayor of N. Y. 10 Paige 539; Davis *v.* Am. Society, etc., 74 N. Y. 362; Tyler *v.* Hamersley, 44 Conn. 419, 422; Stuart *v.* La Salle Co. 83 Ill. 341; Devron *v.* First

Municipality, 4 La. Ann. 11; Levy *v.* Shreveport, 26 La. Ann. 620; Moses *v.* Mobile, 52 Ala. 198; Gault *v.* Wallis, 53 Ga. 675; Phillips *v.* Stone Mountain, 61 Ga. 386; Cohen *v.* Goldsboro Com'rs, 77 N. C. 2; Waters Pierce Oil Co. *v.* Little Rock, 39 Ark. 412; Spink *v.* Francis, 19 Fed. Rep. 670, and 20 Fed. Rep. 567; Suess *v.* Noble, 31 Fed. Rep. 855." (*Ex parte* Sawyer, 124 U. S. 200, XXXI Lawyers' Ed. 406.)

To the same effect are the following cases: Suess *v.* Noble, *et al.*, 31 Fed. Rep. 855; Hemsley, *et al.*, *v.* Myers, *et al.*, and nine other cases, including M. Schandler Bottling Co. *v.* Welch, county attorney, etc., *et al.*, 45 Fed. Rep. 283; Minneapolis Brewing Co. *v.*
62 M'Gillivray, 104 Fed. Rep. 272; Crighto *v.* Dahmer, 21 L. R. A. 84; City of Denver *v.* Beede, 54 Pac. Rep. 624; Wardens of St. Peter's Episcopal Church *v.* Town of Washington, 13 S. E. Rep. 700; and City of Moultrie *v.* Patterson, 34 S. E. Rep. 600.

The clear and positive declaration of law by the highest judicial tribunal of the land in *Ex parte* Sawyer, *supra*, is, without the other citations, determinative of the case at bar, since the prosecutions here sought to be enjoined are outside the exceptions to, and fully within the general rule enunciated in the Sawyer case.

Complainant, however, contends, that said rule is further restricted to the extent indicated by the following excerpts:

"Writers on equity jurisdiction properly say that the court of chancery does not deal with matters of crime, misdemeanors, offenses against prohibitory laws, nor questions of mere morality. But there is this reservation, that it is only when those matters are not connected with rights of property with respect to which the court has jurisdiction. Circumstances may confer a jurisdiction. Attorney General *v.* Cleaver, 18 Ves. 211; Macaulay *v.* Shackell, 1 Bligh. (N. S.) 96. In Springhead Spinning Co. *v.* Riley, (L. R.) 6 Eq. 558, the vice-chancellor says: 'The jurisdiction of this court is to protect property, and it will interfere by injunction to stay any proceedings, whether connected with crime or not, which go to the immediate or tend to the ultimate destruction of property, or to make it less valuable for use or occupation.'" (Louisiana State Lottery Co., *et al.*, *v.* Fitzpatrick, *et al.*, 15 Fed. Cas. 984.)

"Counsel urge that this bill does not show a cause of action cognizable in chancery against Mr. Wiltsie, the district attorney, since its purpose is to restrain him from instituting prosecutions under color of the amendment of 1897. But this complainant is seeking to protect a property right, and it seems to be law that, when such
63 prosecutions are threatened under color of an invalid statute for the purpose of compelling the relinquishment of a property right, the remedy in chancery is available." (Central Trust Co. *v.* Citizens' St. R. R. Co., 80 Fed. Rep. 225.)

"'If the charge be of a criminal nature, or offence against the public, and does not touch the enjoyment of property, then a court of equity should not interpose by injunction.' On the other hand, where it is manifest, as in this case, that a prosecution and arrest is threatened for an alleged violation of city ordinances for the sole purpose of preventing the exercise of civil rights conferred directly

by law, injunction is a proper remedy to prevent injury to the party thus menaced." * * * (City of Atlanta *v.* Gate City G. L. Co., 71 Ga. Rep. 126.)

Besides the three cases last named, complainant also cites, in support of its contention, the following: Reagan *v.* Farmers' L. & T. Co., 154 U. S. 388; Los Angeles City Water Co., *v.* City of Los Angeles, 103 Fed. Rep. 711; M. Schandler Bottling Co. *v.* Welch, 42 Fed. Rep. 561; Rushville *v.* Rushville Natural Gas Co., 15 L. R. A. 321; Springhead Spinning Co. *v.* Riley, 6 L. R. Eq. 588; City of Austin *v.* Cemetery Association, 28 S. W. Rep. 528; Mayor, etc., of Baltimore *v.* Radecke, 49 Md. Rep. 217; Port of Mobile *v.* Louisville & N. R. R. Co., 4 Southern Rep. 106; Wood *v.* City of Brooklyn, 14 Barb. Rep. 425; and Manhattan Iron Works *v.* French, 12 Abbott's New Cases 466.

While it is not my purpose to examine in detail all of complainant's citations, brief references will be made to a few of them.

The opinion in the Louisiana Lottery case, *supra*, as shown by the above quotation therefrom, rests largely upon a principle of equity, well recognized, but which, it seems to me, was inapplicable.

The same is true of City of Atlanta *v.* Gate City G. L. Co., 64 *supra*, where the opinion quotes, from Kerr on Injunctions, the principle to which I refer, as follows:

"'A court of equity,' says Kerr (Injunctions 2), 'has no jurisdiction in matters merely criminal or merely immoral, which do not affect any right of property. If a charge be of a criminal nature, or of an offence against the public peace, and does not touch the enjoyment of property, jurisdiction cannot be entertained. * * * But if an act which is also criminal touches also the enjoyment of property, the court has jurisdiction, but its interference is founded solely on the ground of injury to property.'" (71 Ga. Rep. 126.)

In City of Austin *v.* Austin City Cemetery Association, *supra*, the court discerns and states the inapplicability of the principle as follows:

"Yet it has been held that 'the court will interfere to prevent acts amounting to crime, if they do not stop at crime, but also go to the destruction or deterioration of the value of property.' Spinning Co. *v.* Riley, L. R. 6 Eq. 551. This, however, does not assist us materially in the solution of the present question. It would seem clear that if a party could be enjoined from doing an act, not criminal in its nature, which is injurious to the property of another, he could also be enjoined if the act be one made punishable by law as a crime. The punishment of the criminal, when the act committed has injuriously affected the value of the property of another, does not repair the injury. The question under consideration arises upon quite a different case." (28 S. W. Rep. 529.)

The principle of equity above stated, whose misapplication has led to erroneous conclusions, as I conceive, in some of the cases cited by complainant, means simply, that the fact, that a threatened act, if done, would be a crime, will not prevent a court of equity from enjoining the commission of the act, where it would also be an invasion

of complainant's property rights, and the other requisites to equitable relief concur.

65 The case most frequently cited for this principle is Springhead Spinning Co. *v.* Riley, 6 L. R. Eq. 551, where, at page 558, the court, without reference to its facts, says: "The jurisdiction of this court is to protect property, and it will interfere by injunction to stay any proceedings, whether connected with crime or not, which go to the immediate, or tend to the ultimate destruction of property, or to make it less valuable for use or occupation."

This quotation, although so often otherwise assumed, has no reference whatever to criminal prosecutions, or even to civil suits, but the word "proceedings," therein employed, has an entirely different application, as clearly appears from the facts stated in the syllabus of the case, which is as follows:

"The defendants, who were officers of a trades union, gave notice to workmen by means of placards and advertisements, that they were not to hire themselves to the plaintiffs pending a dispute between the union and the plaintiffs. The bill prayed an injunction to restrain the issuing of the placards and advertisements, alleging that by means thereof the defendants had, in fact, intimidated and prevented workmen from hiring themselves to the plaintiffs, and that the plaintiffs were thereby prevented from continuing their business, and the value of their property was seriously injured and materially diminished:—

"Held, upon demurrer, that the acts of the defendants, as alleged by the bill, amounted to crime, and that the court would interfere by injunction to restrain such acts, inasmuch as they also tended to the destruction or deterioration of property." (6 L. R. Eq. 551.)

As a further abstract statement of the law concretely enunciated in said syllabus, substantially, however, to the same effect as the one above quoted, the court, at page 560, says: "The truth, I

66 apprehend, is, that the court will interfere to prevent acts amounting to a crime, if they do not stop at crime, but also go to the destruction or deterioration of the value of property."

This rule has no connection with, or relation whatever to the question of the power of a court of equity to enjoin criminal prosecutions, and I am unable to accept as well reasoned any conclusion, which results from confounding the two matters.

In Reagan *v.* Farmers' L. & T. Co. neither the opinion of the court nor briefs of counsel discuss or in any way refer to the question last mentioned, and this, doubtless, for the reason, that the proceedings there enjoined were not criminal prosecutions, but civil actions to recover statutory forfeitures and penalties, and, moreover, in that case, there were other grounds for equitable relief.

In Los Angeles City Water Co. *v.* City of Los Angeles, of the numerous authorities, which the opinion cites, concerning the remedy by injunction, not one touches the question of equitable cognizance over criminal prosecutions, and the inference is a fair one, that it was not presented in argument, or specially considered by the court. Furthermore, there was jurisdiction in the case to enjoin civil suits for the forfeiture of complainant's property,

and it was no doubt assumed by all the parties, whether correctly or otherwise need not now be considered, that the court, having acquired jurisdiction for one, would exercise it for all purposes.

In M. Schandler Bottling Co. *v.* Welch, 42 Fed. Rep. 561, on which complainant seems to place much reliance, the opinion by Philips, district judge, was filed July the 18th, 1890, on the granting of a temporary injunction. Afterwards, to wit, February the 18th, 1891, the same case was heard on demurrer before Caldwell, circuit judge, when the demurrer was sustained, the temporary injunction was dissolved, and the bill dismissed for want of equity. (45 Fed. Rep. 283.)

67 On the first hearing, the court said:

"The remaining question, not disposed of in that discussion, is whether or not this suit is obnoxious to the objection that a court of equity never extends its jurisdiction to the enjoining of criminal proceedings. This is, unquestionably, a well-settled rule of equity jurisprudence. Railway Co. *v.* Kansas City, 29 Mo. App. 89, and loc. cit. This question underwent extended discussion in *re* Sawyer, 124 U. S. 200, 8 Sup. Ct. 482. Mr. Justice Gray, who delivered the majority opinion, said, *inter alia:*

"'The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment, or the pardon of crimes or misdemeanors. * * * To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, * * * is to invade the domain of the courts of common law.'

"Without stopping to consider whether this general rule is limited to criminal proceedings already begun in the court of criminal jurisdiction, it is sufficient to the matter in hand to say, as indicated in the quotation above made, that the rule has its exceptions. One of these is where a threatened criminal proceeding is hostile, vexatious, and unwarranted, and involves the wanton destruction of or injury to property interests of the accused; and especially so under circumstances where, if permitted to proceed, the party injured would have no adequate remedy at law for restitution. Mr. Justice Gray recognizes this. He quotes from Sheridan *v.* Colvin, 78 Ill. 237:

"'It is elementary law that the subject-matter of the jurisdiction of a court of chancery is civil property. The court is conversant only with questions of property and the maintenance of civil rights. Injury to property, whether actual or prospective, is the
68 foundation on which the jurisdiction rests. The court has no jurisdiction in matters purely criminal or merely immoral, which do not affect any right to property.'

"Again he says:

"'No question of property is suggested in the allegations of matters of fact in the bill, or would be involved in any decree that the court could make thereon.'" (42 Fed. Rep. 563.)

On the latter hearing, the court said: "The bill seeks to enjoin criminal proceedings. A court of equity possesses no such power.

This principle is settled by the uniform current of authorities in England for two centuries, and in this country from the foundation of its jurisprudence. The recent emphatic reaffirmance of the doctrine by the Supreme Court of the United States renders it unnecessary to do more than repeat the rule in the language of the court." Then follows the quotation which I have already given from *Ex parte* Sawyer, *supra*.

Thus, it will be seen, that the latter decision, although not so in terms, is substantially a reversal of the former one. It will also be noted, that the opinion on the first hearing, when the temporary injunction was granted, seeks to draw support from *Ex parte* Sawyer, by quoting certain expressions of Mr. Justice Gray with reference to property rights and civil rights.

Obviously, however, these expressions were used by Mr. Justice Gray, not to suggest a further exception, but merely to show, that the facts of the case did not bring it within the exception embodied in his previous statement of the general doctrine, which I have already quoted, namely (the italics being mine): "The modern decisions in England by eminent equity judges concur in holding that a court of chancery has no power to restrain criminal proceedings, *unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there.*"

69 This unambiguous and definite statement of the rule does not admit of any exception other than the one, which it expressly allows: besides, a careful examination of at least one of the authorities cited, Suess *v.* Noble, 31 Fed. Rep. 855, shows, that no other exception could have been in the mind of the court. The following is the statement of the last case:

"The original cause of State *v.* Suess was removed from the district court of Jefferson county, Iowa, to this court upon the petition of said Suess, and the same is now pending here. The transfer was made in pursuance of the decision of the circuit judge, Brewer, in the case of State *v.* Walruff, 26 Fed. Rep. 178. The purpose of that proceeding was to have the brewery owned and maintained by said Suess declared a nuisance, and as such perpetually enjoined and abated. A temporary restraining order, which is still in full force, was issued from this court, the purpose of which was to restrain certain persons, who were carrying on the civil proceedings in the State court, from prosecuting the same to the injury and virtual destruction of the property pending the determination of the question of the jurisdiction of this court over the subject-matter of the said original suit. Lewis Suess now presents his petition to this court against the above-named defendants and others, alleging that they are engaged in commencing and carrying on many criminal prosecutions against him before certain justices of the peace 'for each separate sale of beer at his brewery,' and that they propose 'to place him on trial and find him guilty of selling intoxicating liquors, and to impose upon him heavy fines for said alleged offenses,' etc. He also states, in a supplemental petition, that he was indicted at the January term of the district court of said county for the alleged crime of causing a nuisance by the sale of beer at his brewery; that he was convicted of

said alleged offense, and that he has taken an appeal to the supreme court of Iowa upon the Federal question as to the constitutionality of the prohibitory law, etc. The prayer of his petition is that
70 this court issue an injunction restraining said defendants from the prosecution of said criminal suits in violation of his rights respecting the subject-matter of the action now pending in this court until the final determination of the same."

Thus, it will be seen, that the criminal prosecutions sought to be enjoined were one of the means employed to close up the complainant's business, and yet the court held, quoting the syliabus: "No power exists in any court of equity to interfere by injunction with the prosecution and punishment of crimes and offenses in the courts of common law."

In the quotation which Mr. Justice Gray makes from the Illinois case of Sheridan *v.* Colvin, the phrase, "The court has no jurisdiction in matters purely criminal or merely immoral which do not affect any right to property," has no reference to criminal prosecutions, but was simply intended to declare, that a court of equity would not interfere with acts merely on the ground of their immorality, or because they would, if committed, be crimes.

So that the decision in *Ex parte* Sawyer, *supra*, whether we look solely to its text, or the supporting authorities, is, as I have before stated, conclusive against complainant's contention.

In addition to what has already been said, it may be appropriately observed, that regulations of saloons, beer halls, of theaters and places of amusement generally, of market places, of slaughter-houses, of gas works,—indeed, of all establishments and trades subject to the police power of the State, of streets and franchises therein for railway tracks, telegraph poles, pipe lines, etc., unavoidably affect property rights, and are usually rendered effective by making their violations punishable offenses. Now, if there were such jurisdiction as that, for which complainant contends, every controversy over the validity of an ordinance or statute relating to any of the matters enumerated would furnish an occasion for interference by
71 injunction, and thus would be presented the remarkable situation of courts of equity, State and Federal, exercising supervisory power over the administration of a part, not inconsiderable, of the criminal laws of the country.

The jurisdiction asserted by complainant does not, in my opinion, exist, and, for that reason, the temporary injunction applied for will be refused.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 1015. U. S. circuit court, southern district of California. Davis & Farnum Manfg. Co. *vs.* City of Los Angeles. Opinion of the court on application for temporary injunction. Filed Apr. 3 1902 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy

72 At a stated term, to wit, the January term, A. D., 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of Califor-

nia, southern division, held at the court-room in the city of Los Angeles, on Thursday, the tenth day of April, in the year of our Lord one thousand nine hundred and two.

Present: The Honorable Olin Wellborn, district judge.

DAVIS & FARNUM MANUFACTURING Co., a Corporation, Complainant,
v.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant. } No. 1015.

It is ordered, that the clause of the opinion filed herein April the 3rd, 1902, beginning with the words "In addition to," on page 11, and ending with the words "punishable offenses," on page 12, be stricken out, and the following substituted therefor:

In addition to what has already been said, it may be appropriately observed, that municipal and State regulations of saloons, beer halls, theaters and places of amusement generally, market places, slaughter-houses, gas works, powder magazines, laundries, cemeteries, fire limits, streets, particularly obstructions, railway tracks, telegraph poles, pipe lines, etc., therein—indeed, of all establishments, trades and occupations subject to the police power of the State, unavoidably affect property rights and are usually rendered effective by making their violations punishable offenses.

And the clerk of this court is directed to attach a copy of this order to the margin and near the bottom of page 11 of said opinion.

73 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
CITY OF LOS ANGELES, Defendant.

Comes now the said complainant and files the following assignment of errors upon which it will rely on appeal in the above-entitled cause:

1. The court erred in denying complainant's motion for an injunction in the above-entitled cause;

2. The court erred in sustaining the demurrer filed to the complaint in the above-entitled cause;

3. The court erred in dismissing the complainant's bill;

4. The court erred in entering the decree in favor of the said City of Los Angeles, defendant, and for its costs against the said complainant.

In order that the foregoing assignment of errors may be and appear of record, complainant presents the same to the court, and prays that such disposition may be made thereof as in accordance with law and the statutes of the United States in such case made

and provided; and complainant prays a reversal of the decretal order and drecree of dismissal made and entered by said court.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Solicitors for Complainant.

74 (Endorsed:) No. 1015. In the circuit court of the United States ninth circuit southern district of California. Davis & Farnum Manufacturing Company plaintiff *vs.* City of Los Angeles defendant. Assignment of errors. Filed Sep. 29 1902. Wm. M. Van Dyke, clerk. Lynn Helm, attorney for complainant. Los Angeles, California.

75 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
CITY OF LOS ANGELES, Defendant.

To the Honorable Olin Wellborn, district judge and one of the judges of the above-named court, presiding therein:

The above-named complainant in the above-entitled cause, Davis & Farnum Manufacturing Company, conceiving it is aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause, under date of April 3rd, 1902, wherein and whereby it was ordered and decreed that the said complaint be dismissed for want of equity, and the injunction prayed for denied, does hereby appeal to the Supreme Court of the United States from said order and decree, and each and every part thereof, and it prays that its petition for its said appeal may be allowed, and that the transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated September 29th, 1902.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Solicitors for Complainant.

76 (Endorsed:) No. 1015. In the circuit court of the United States ninth circuit southern district of California. Davis & Farnum Manufacturing Company plaintiff *vs.* City of Los Angeles defendant Petition for appeal. Filed Sep. 29 1902 Wm. M. Van Dyke clerk Lynn Helm, attorney for complainant. Los Angeles, California

77 At a stated term, to wit: August, A. D. 1902, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the

court-room in the city and county of Los Angeles, on Monday, September 29th, A. D. 1902.

Present: Honorable Olin Wellborn, district judge, one of the judges of the circuit court of the United States for the ninth circuit, sitting in equity.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
CITY OF LOS ANGELES, Defendant.

On motion of Lynn Helm, Esq., solicitor and of counsel for complainant, it is ordered that an appeal to the Supreme Court of the United States, from the final decree heretofore filed and entered herein be, and the same is hereby allowed, and that a certified transcript of the record, complaint, demurrer, pleadings and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that a bond on appeal be fixed at the sum of five hundred dollars to act as a supersedeas bond; also as a bond for costs and damages on appeal.

Dated September 29th, 1902.

OLIN WELLBORN, *Judge.*

78 (Endorsed:) No. 1015. In the circuit court of the United States ninth circuit southern district of California Davis & Farnum Manufacturing Company plaintiff *vs.* City of Los Angeles defendant Order allowing appeal. Filed Sep. 29 1902 Wm. M. Van Dyke, clerk Lynn Helm, attorney for complainant. Los Angeles, California

79 In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, Complainant,
vs.
CITY OF LOS ANGELES, Defendant.

Know all men by these presents that we, The Davis & Farnum Manufacturing Company, a corporation organized and doing business under the laws of the State of Massachusetts, as principal, and American Bonding Company of Baltimore, organized under the laws of the State of Maryland, as surety, are held and firmly bound unto the City of Los Angeles, a municipal corporation of the State of California, in said district, in the full and just sum of five hundred dollars, to be paid to the said City of Los Angeles, to which payment well and truly to be made, we bind ourselves, jointly and severally and firmly by these presents.

Sealed with our seals and dated this 29th day of September, A. D. 1902, at Los Angeles, Cal.

Whereas, lately at a session of the circuit court of the United States, for the southern district of California, in a suit pending in said court between the said Davis & Farnum Manufacturing Company, a corporation, complainant, and The City of Los Angeles, a municipal corporation, defendant, a decree was rendered against the said complainant, Davis & Farnum Manufacturing Company, and the said Davis & Farnum Manufacturing Company have obtained from said court an order allowing an appeal to the Supreme
80 Court of the United States to reverse the decree of the aforesaid suit, and a citation directed to the said City of Los Angeles, is about to be issued, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at Washington, District of Columbia.

Now, the condition of the above obligation is such, that if the said Davis & Farnum Manufacturing Company shall prosecute its said appeal to effect and shall answer all damages and costs that may be assessed against it if it fails to make good its plea, then the above *above* obligation is to be void; otherwise to remain in full force and virtue.

DAVIS & FARNUM MANUFACTURING COMPANY, [SEAL.]
By LYNN HELM, *Its Attorney.*
AMERICAN BONDING COMPANY OF BALTIMORE,
[SEAL.] By E. T. DUNNING, *Vice-President.*

Attest: WM. DIETERLE,
Assistant Secretary.

The foregoing bond is approved this 29th day of September, 1902.
OLIN WELLBORN, *Judge.*

(Endorsed:) No. 1015. In the circuit court of the United States, ninth circuit, southern district of California. Davis & Farnum Manufacturing Co. plaintiff *vs.* City of Los Angeles defendant. Appeal bond Filed Sep. 29, 1902 Wm. M. Van Dyke, clerk Lynn Helm, attorney for complainant, Los Angeles, California

81 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

DAVIS & FARNUM MANUFACTURING COMPANY, a Corporation, Complainant,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.
} No. 1015.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing

eighty (80) typewritten pages, numbered from 1 to 80 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the record, pleadings, papers, opinion of the court, assignment of errors and all proceedings in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States, in said cause.

I do further certify that the cost of the foregoing record is $50.50 the amount whereof has been paid me by The Davis &
82 Farnum Manufacturing Company, a corporation, the appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, this 8th day of October, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

Endorsed on cover: File No. 18,735. S. California C. C. U. S. Term No. 507. Davis & Farnum Manufacturing Company, appellant, vs. The City of Los Angeles. Filed November 14", 1902.